

2 DECEMBER 1947

I N D E X  
of  
WITNESSES

<u>Defense' Witnesses</u>	<u>Page</u>
OOSHIMA, Hiroshi (resumed)	34288
Cross (cont'd) by Mr. Tavenner	34288
Question by the Acting President of the Tribunal, Major-General Myron C. Cramer	34292
Cross (cont'd) by Mr. Tavenner	34295
Question by the Acting President of the Tribunal, Major-General Myron C. Cramer	34303
Cross (cont'd) by Mr. Tavenner	34304
<u>MORNING RECESS</u> 34316	
Cross (cont'd) by Mr. Tavenner	34318
Questions by the Acting President of the Tribunal, Major-General Myron C. Cramer	34325
Redirect by Mr. Cunningham	34326
<u>NOON RECESS</u> 34327	
Questions by the Acting President of the Tribunal, Major-General Myron C. Cramer	34331
(Witness excused and returned to the dock)	34333

2 DECEMBER 1947

I N D E X  
of  
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1157-A		3521	Telegram from Foreign Minister MATSUOKA to Ambassador OSHIMA in Berlin dated 17 February 1941		34293
		3522	September 1941 issue of TOKYO NICHI NICHI	34309	
2819	3523		Letter dated 16 September 1938 from Foreign Minister UGAKI to Premier KONOYE re the Emperor's appointment of Lieutenant-General OSHIMA as Japanese Ambassador to Germany	34340	
2819-A	3523-A		Letter from Premier KONOYE to Foreign Minister UGAKI dated 22 September 1938 re Imperial approval re appointment of Lieutenant-General OSHIMA	34340	
2819-B	3523-B		Letter from Foreign Minister KONOYE to War Minister ITAGAKI dated 6 October 1938 re Emperor's appointment of Lieutenant-General OSHIMA as Japanese Ambassador to Germany	34340	

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I N D E X  
of  
EXHIBITS  
(cont'd)

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<u>No.</u>	<u>No.</u>	<u>No.</u>			
2819-C	3523-C		Letter from War Minister ITAGAKI to Foreign Minister Prince KONOYE dated 7 October 1938 re Emperor's appointment of Lieutenant-General OSHIMA's appointment as Ambassador		34340
			<u>AFTERNOON RECESS</u>		34349
2854	3524		Excerpt from Exhibit No. 2692 - Official Trans- cript of the Inter- national Military Tribunal at Nurnberg, Germany on 30 March 1946 (pp.6814- 6816)		34351

Tuesday, 2 December 1947

INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Court House of the Tribunal  
War Ministry Building  
Tokyo, Japan

8 The Tribunal met, pursuant to adjournment,  
9 at 0930.

## 10 | Appearances:

11 For the Tribunal, all Members sitting, with  
12 the exception of: HONORABLE JUSTICE SIR WILLIAM F.  
13 WEBB, Member from the Commonwealth of Australia, not  
14 sitting from 0930 to 1600; HONORABLE JUSTICE JU-AO  
15 MEI, Member from the Republic of China, not sitting  
16 from 1330 to 1600.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19 — — —

(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

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1 MARSAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 ACTING PRESIDENT: All the accused are present  
4 except MATSUI, who is represented by counsel. We have  
5 a certificate from the prison surgeon of Sugamo cer-  
6 tifying that he is ill and unable to attend the trial  
7 today. The certificate will be recorded and filed.

8 With the Tribunal's permission the accused  
9 SHIRATORI will be absent from the courtroom for the  
10 whole of the morning session conferring with his  
11 counsel.

12 Captain Kraft.

13 LANGUAGE ARBITER (Captain Kraft): If the  
14 Tribunal please, we submit the following language  
15 correction:

16 Reference exhibit No. 1175, page 1, first  
17 line above paragraph numbered 1, and record page  
18 10,363, line 4: Delete "Draft adopted at the Liaison  
19 Conference," and substitute "Draft proposed for  
20 decision by the Liaison Conference."

22 ACTING PRESIDENT: Mr. Tavenner.

23 - - -  
24  
25

HIROSHI OSHIMA, an accused, resumed the stand and testified through Japanese interpreters as follows:

#### CROSS-EXAMINATION

BY MR. TAVERNER (Continued):

Q General OSKIMA, when I was questioning you yesterday regarding your opposition to MATSUOKA's policies toward the United States in May and June 1941, I failed to ask you a question I intended to ask you.

Did you not on or about July 12, 1941 state to Weiszaecker that you had recently advised MATSUOKA again simply to break off negotiations with Washington?

A I have no recollection of that.

Q Well, did you not in fact so advise  
MATSUOKA?

A My conviction is that I did not say any such thing. My attitude was made clear in a telegram which I sent.

Q I will now return to matters involving Indo-China.

I was asking you questions yesterday about the request from Tokyo for German pressure to be brought upon Vichy France in order to enforce certain

1 demands against French Indo-China. I desire now to go  
2 back and ask you whether or not you received a wire  
3 from MATSUOKA on 17 February 1941, requesting that  
4 you take appropriate measures to bring German pressure  
5 to bear upon France to accept Japanese mediation  
6 plans in the Indo-China-Thailand dispute.

7 A Are you sure there is no mistake in the  
8 date, 17 February 1941?

9 Q No, I am reasonably certain.

10 A At that time I was not yet in Germany.

11 Q Did there come to your attention a telegram  
12 sent from MATSUOKA -- strike the question, please.

13 I hand you prosecution document 1157-A,  
14 which purports to be a copy of a telegram from  
15 MATSUOKA to Ambassador OSHIMA of date February 17,  
16 1941, bearing number 123, Foreign Office, marked  
17 "secret."

18 Now, whether you had actually arrived in  
19 Berlin or whether you were in transit to Berlin at  
20 that time or not, did you receive that telegram?

21 Just a moment, please. Since handing you  
22 the document purporting to be a copy, I have obtained  
23 the original. Will you examine the original?

24 A This telegram arrived in Berlin before my  
25 arrival in Berlin. I believe that the Charge

1 d'Affaires took care of it. I, myself, think I must  
2 have seen it after assuming my post, but I have no  
3 clear recollection of having done so. However, since  
4 this telegram bears neither the seal of the Foreign  
5 Office nor the seal of the recipient, I cannot say  
6 for a certainty that this is a telegram sent from the  
7 Foreign Office.

8 Q You were en route from Japan to Berlin at  
9 the time this telegram arrived in Berlin; is that  
10 not true?

11 A Yes.

12 MR. TAVENNER: This telegram is offered in  
13 evidence.

14 MR. CUNNINGHAM: It is objected to for the  
15 reason that it is not properly identified, it has not  
16 been shown that the telegram came to the attention of  
17 the accused or the witness, and it is not binding  
18 upon him.

19 I want to further object to the introduction  
20 of documents on the part of the prosecution at this  
21 stage of the proceeding without first showing that the  
22 documents were not in the possession of the prosecu-  
23 tion at the time they presented their case.

24 ACTING PRESIDENT: Your last objection has  
25 been ruled on many times by this Tribunal, and it

1         ruled that they are allowed to introduce them in  
2         cross-examination. So it will not be necessary to  
3         argue that point any more.

4                     MR. CUNNINGHAM: Yes, your Honor, but the  
5         complexion and leadership of this Tribunal has  
6         changed since that ruling was made upon that matter,  
7         and it probably should be open for reconsideration.

8                     I merely want to state that it is highly unfair, it  
9         is prejudicial to the accused, it is taking unfair  
10        advantage by the prosecution, it is making the  
11        defendant answer to charges which were not presented  
12        in the prosecution's case.

13                    ACTING PRESIDENT: Did you not hear me say  
14        we did not want any more argument on that? . . .

15                    MR. CUNNINGHAM: I presume it is within my  
16        right to ask for a reconsideration of the matter.

17                    ACTING PRESIDENT: The previous ruling of  
18        the Tribunal will stand.

19                    MR. CUNNINGHAM: Now, about the first ob-  
20        jection: it is not properly identified by the witness,  
21        is not shown to have come to the knowledge of the  
22        witness, and is therefore not binding upon this wit-  
23        ness.

24                    ACTING PRESIDENT: What do you say to that,  
25        Mr. Tavenner?

1 MR. TAVENNER: If the Tribunal please, the  
2 witness testified that he was en route at the time this  
3 was directed to him, that his attache, military attache,  
4 handled it, that in all probability he saw it.

4 ACTING PRESIDENT: He said the charge d'affaires  
5 and not the military attaché.

6 MR. TAVENNER: Yes, sir, he said charge  
7 d'affaires.

Therefore, it was a matter which binds him,  
was handled by his agent, and which he has shown from  
his own testimony he was sufficiently acquainted with  
to have in general terms identified this document.

3 MR. CUNNINGHAM: Your Honor, may I correct a  
4 statement which I consider is not a correct statement  
5 of the fact, and that is that the charge d'affaires is  
6 not an agent of the ambassador; that a charge d'affaires  
7 is the ambassador ad interim during the time of the  
8 absence of the ambassador, and whatever happens during  
9 the time of the term of office of the charge d'affaires  
0 is his responsibility.

1 ACTING PRESIDENT: I have a question from a  
2 Member of the Tribunal which may have some bearing on  
3 the matter.

When did you in fact return to Berlin?

THE WITNESS: My recollection is that I

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0 is his responsibility.

1 ACTING PRESIDENT: I have a question from a  
2 Member of the Tribunal which may have some bearing on  
3 the matter.

When did you in fact return to Berlin?

THE WITNESS: My recollection is that I

assumed my post on the 19th of February 1941.

1           ACTING PRESIDENT: What date does the telegram  
2 show that it was received in Berlin?

3           MR. TAVENNER: The date is blank.

4           ACTING PRESIDENT: The date of dispatch was  
5 the 17th of February?

6           MR. TAVENNER: Yes, sir, at 10 p.m.

7           ACTING PRESIDENT: By a majority, the objection  
8 is overruled. The document will be admitted.

9           CLERK OF THE COURT: Prosecution document  
10 1157-A will receive exhibit No. 3521.

12           (Whereupon, the document above  
13 referred to was marked prosecution exhibit  
14 No. 3521 and received in evidence.)

15           MR. TAVENNER: I regret to advise the Tribunal  
16 that there are not sufficient copies in English avail-  
17 able for all the Members of the Tribunal. I have pro-  
18 duced all the copies that I can find.

19           ACTING PRESIDENT: Is there any copy for the  
20 defense?

21           MR. TAVENNER: I have just suggested that  
22 counsel look at my copy with me as I read it.

23           MR. CUNNINGHAM: I don't like to be difficult,  
24 but I think that this manner of procedure after the  
25 technical compliance that the prosecution required is

certainly difficult for us.

<sup>1</sup> ACTING PRESIDENT: I will give you my copy.

3 MR. TAVENNER: The prosecution has never been  
4 required to distribute documents being used on cross-  
5 examination. Had I known in sufficient time that I  
6 would use this document, I of course would have done so.

7 MR. CUNNINGHAM: That brings up another issue,  
8 your Honor, that the prosecution in all reasonable fair-  
9 ness should be required to serve these documents on the  
10 defense at least twenty-four hours in advance so that  
11 we have the same notice as they have as to what the  
12 evidence in this case is going to be, and it is cer-  
13 tainly a ridiculous thing to impose upon the defense one  
14 obligation and not the same obligation upon the prosecu-  
15 tion.

16 ACTING PRESIDENT: You have been told time  
17 and again that that is not the rule of the Court. It  
18 would destroy all surprise on cross-examination.

MR. CUNNINGHAM: I submit. --

21 ACTING PRESIDENT: It is no use taking up the  
22 time of the Court with arguing these things over and  
23 over again.

24 MR. CUNNINGHAM: I submit, your Honor, that  
25 merely because the Court makes a mistake is no reason  
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22 time of the Court with arguing these things over and  
23 over again.

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25 merely because the Court makes a mistake is no reason  
why it should not correct the mistake.

1 ACTING PRESIDENT: That will do from you,  
2 Mr. Cunningham.

3 MR. TAVENNER: I will read the exhibit:  
4 "Concerning the current mediation in the  
5 Thailand-French Indo-China border dispute, please pro-  
6 pose to the government to which you are assigned to use  
7 its good offices to have Vichy government accept our  
8 mediation plan after having explained the following:

9 "(1) The success or failure of our mediation  
10 will not only gravely affect the political situation  
11 of East Asia, but the positions of all Axis Powers.  
12 Hence, this is not merely a local problem between Thai-  
13 land and French Indo-China. That is, in case of rupture  
14 of the mediation, fighting between Thailand and French  
15 Indo-China will inevitably start again and this, in the  
16 long run, may lead to our armed intervention. However,  
17 in such case, it will become impossible to obtain  
18 rubber, rice and other products of that area, which are  
19 of necessity to both Japan and Germany. Needless to  
20 say, this not only will be a great obstacle in the  
21 execution of the national policies of both Japan and  
22 Germany, but will enable England and America to take  
23 advantage of this opportunity to throw the South Seas  
24 into confusion through intensification of their activ-  
25 ities toward the Netherland East Indies and French

1 Indo-China and also through the carrying out of their  
2 favorite propaganda. It is clearer than seeing fire  
3 that this will upset Japan's southern policy and  
4 eventually cause a serious setback in the operations of  
5 Germany and Italy.

6 "Moreover, in the above instance, the situation  
7 will be such that it will be difficult to guarantee that  
8 England will not steal a march on us and take such action  
9 as to occupy the strategic points of Thailand. On  
10 the other hand, in case the mediation is a success, we  
11 will be able to peacefully establish our influence in  
12 Thailand and French Indo-China and also firmly estab-  
13 lish the grounds upon which to request for the various  
14 conveniences which we desire, besides leaving no room  
15 for the activities of England and America. Therefore,  
16 the question as to whether the position of Japan in East  
17 Asia will be strengthened or not depends directly on  
18 the success of this mediation and this, at the same  
19 time, affects the question of the extension of the Axis  
20 Powers' influence against England and America.  
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19 time, affects the question of the extension of the Axis  
20 Powers' influence against England and America.  
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1        "(2) However, there is too great a gap in  
2        the assertions of both France and Thailand and there  
3        appears to be no sign of their compromising readily.  
4        On the other hand, since the international situation  
5        has become such that further delay in the settle-  
6        ment of the matter is not permissible, we have taken  
7        the assertions of both into consideration and  
8        decided this mediation plan. However, the gist of  
9        it is to return to Thailand the greater part of the  
10       territory lost in 1904 and 1907. The former was  
11       taken from Thailand by France as compensation for  
12       the abolition of extraterritoriality, but if the  
13       illogical state wherein extraterritoriality, itself,  
14       was established by force is taken into consideration,  
15       it was all the more illogical to make her cede her  
16       territory as compensation and this should be cor-  
17       rected. The latter was taken over from Thailand in  
18       the form of an exchange for several small areas, but  
19       looking at it racially or historically, there is no  
20       basis for it. It is merely a case where France stole  
21       it with the pressure of a powerful state.

22       "Moreover, in our mediation plan, we have  
23       decided to return only a small portion of the latter  
24       to Thailand in the form of a sale and to reserve for  
25       French Indo-China the historic sites of Cambodja

1                   recognition of French Indo-China's cultural achieve-  
2                   ments towards Ankor Vat.

3                   "(3) Reasons for deciding on the mediation  
4                   plan.

5                   "(a) Besides that mentioned previously,  
6                   the question of restoration of lost territory is,  
7                   for France, a problem of a colony or, accurately  
8                   speaking, an area of a protectorate located far away  
9                   and having no natural connection when considered  
10                   from all racial, historical, geographical and cul-  
11                   tural aspects, but it is, for Thailand, a problem  
12                   of her domain and racial alienation. Hence, the  
13                   degree of gravity differs completely.

14                   "(b) Although France points out that  
15                   Thailand has suddenly enlarged upon her demand (the  
16                   two areas of Laos on the right bank of the Mekong  
17                   River) made prior to the acceptance of Japan's  
18                   mediation and asserts that this is unreasonable, that  
19                   there may be such a change with the development of  
20                   military action is inevitable. Hence, the question  
21                   lies in whether the present Thailand-French Indo-  
22                   China border is correct when the truth is considered.

23                   "(c) In regard to the war situation, although  
24                   Thailand was defeated in sea battles, it has been an  
25                   overwhelming victory for Thailand in regard to land

1 battles, which hold the key to overall victory, and  
2 if we had not proposed to mediate, the Thailand army  
3 would have overrun all Cambodia. Besides the above  
4 fact, it is not only our officers, who have inspected  
5 the locality who unanimously admits the fact that the  
6 morale of the Thailand Army is high while the French  
7 Indo-China Army has absolutely no fighting spirit,  
8 but even among the French officials who have visited  
9 the front, there are some expressing the same opinion.

10 "(d) In view of this above-mentioned fact  
11 and from the fact that the French Indo-China Army  
12 although she may reopen hostilities is unable to  
13 oppose the Thailand Army with all its force while  
14 the Japanese Army is stationed north of Hanoi as at  
15 present, the defeat of the French is nearly certain.  
16 Consequently, it would be wise for France to forget  
17 all sentimental arguments and sour grapes at this  
18 time and seek for a rapid solution of the problem  
19 with the magnanimity worthy of a great nation rather  
20 than to discuss peace after being defeated.

21 "(e) In regard to the territory lost in  
22 1904, although it seems as if France has a true in-  
23 tention toward restitution on the whole, she is  
24 manifesting considerable disapprobation in regard to  
25 the territory lost (T.N. by Thailand) in 1907. As

for Thailand, however, there is a view that the  
1 former could have been acquired without depending on  
2 our mediation and that if Japan had not intervened,  
3 they would have been able to take back more terri-  
4 tory in the Cambodia area. The British also are  
5 supporting this view to dampen Japan's mediation  
6 and since this will lead to the alienation of the  
7 collaboration between Japan and Thailand, the possi-  
8 bility of Thailand regarding our mediation as  
9 troublesome from that standpoint of her international  
10 (T.N. This has been changed to 'internal' but the  
11 original Japanese character is not crossed out)  
12 situation and resorting to arms again is great if  
13 the restoration of lost territories is restricted to  
14 the former. Hence, we are confronted with the  
15 absolute necessity of making the French make some  
16 concession in regard to the latter and of preventing  
17 Thailand from ceding from our camp and joining the  
18 Anglo-American camp.  
19

"(4) According to the explanation of  
21 Thailand, when Thailand sought for Germany's help  
22 in regard to this question of restoration of lost  
23 territories, Foreign Minister Ribbentrop had replied  
24 to the Thailand Minister in Germany and to the  
25 Thailand Foreign Minister through the German Minister

1 in Thailand that since problems of French Indo-  
2 China have been all left in the hands of Japan, Japan  
3 should be consulted, and Thailand is thinking of act-  
4 ing according to Japan's view in regard to this  
5 matter.

6 "However, there has been no manifestation  
7 of such intention as mentioned above from Germany  
8 at any time. Not only that, but France has hinted  
9 that as a result of the German-French Armistice  
10 agreement, they have no right to dispose of freely  
11 problems such as this matter pertaining to the dis-  
12 position of her colonies until the peace conference.  
13 Hence, it is deemed that the difficulty for the  
14 completion of the mediation lies with France.

15 "However, (1) since the success of the  
16 mediation will greatly affect the execution of the  
17 national policies of the Axis powers, it is necessary  
18 to bring this immediately to a success by all means  
19 and to establish our influence and stamp out the  
20 activities of England and America.

21 "(2) If we do not satisfy Thailand to a  
22 certain extent, there is the danger of Thailand  
23 swinging away from Japan. Moreover, for this pur-  
24 pose, it is necessary to add pressure on France, but  
25 to make France accept our mediation plan, it is

1       deemed that there is no alternative but to rely  
2       upon the speedy and effective good offices of the  
3       German Government toward the Vichy Government.

4       Hence, it is desired that appropriate measures be  
5       devised immediately.

6       "Furthermore, the chief of the Bureau of  
7       South Seas Affairs has shown our mediation plan to  
8       the German councillor here on the 17th and has re-  
9       quested for the good offices of the German Govern-  
10      ment after explaining the detailed situation."

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1                   ACTING PRESIDENT: Are you through?

2                   MR. TAVENNER: Yes, sir.

3                   ACTING PRESIDENT: I trust you will see that  
4                   the Members of the Tribunal get copies of that exhibit  
5                   when it is processed.

6                   MR. TAVENNER: Yes, sir. All the rules of  
7                   the Tribunal with regard to the distribution will be  
8                   complied with as soon as the work can be physically  
9                   done.

10                  ACTING PRESIDENT: I have two or three queries  
11                  here from Members of the Tribunal.

12                  In effect, is it not possible to avoid this  
13                  situation of introducing these documents without copies?

14                  MR. TAVENNER: It can only be avoided by  
15                  coming to a decision about the use of the document  
16                  far enough in advance to permit the processing department  
17                  to get the work done.

18                  ACTING PRESIDENT: This is the second time  
19                  in two days.

20                  I have a question from a Member of the Tribunal.  
21                  BY THE ACTING PRESIDENT:

22                  Q    Did I understand you correctly that you  
23                  assumed your duties in Berlin on the 19th of February?

24                  A    I did not begin my duties on that date. My  
25                  duties cannot commence until after I had presented --

1 after I present my credentials, and therefore I did  
2 not begin my duties until the 28th of February.

3 Q What date did you actually arrive in Berlin?

4 A I arrived on the 19th.

5 BY MR. TAVENNER (Continued)

6 Q And you held conferences with Ribbentrop at  
7 least as early as the 23rd of February, before you  
8 had presented your credentials, didn't you?

9 A That was in an entirely different capacity.  
10 I could not meet Ribbentrop in an official capacity  
11 until after I had presented my credentials, but since  
12 we were old friends he asked me to come and see him  
13 and this visit was entirely contrary to diplomatic  
14 usage.

15 Q But nevertheless it occurred?

16 A Yes.

17 Q Now, did the German representatives in  
18 accordance with this telegram bring pressure to bear  
19 on Vichy France?

20 A I don't recall at all.

21 Q Did you later communicate with Tokyo in regard  
22 to this matter?

23 A It is not in my recollection.

24 Q Did you approve of and favor Japanese establish-  
25 ment of naval and air bases in South French Indo-China

in 1941?

1       A    My opinion was never asked on that matter,  
2 and actually since I had no knowledge regarding how  
3 things stood in the Orient at the time, I never even  
4 thought of that.

5       Q    Well, now, let me refresh your recollection  
6 about that. Did you not, as early as 12 July 1941,  
7 advise Weizsaecker that the occupation of certain  
8 positions in South Indo-China as bases for aircraft  
9 and warships was an urgent Japanese need?

10      A    I must have conveyed to him instructions which  
11 arrived from Japan.

12      Q    Then you did know of the contemplated action  
13 of establishing naval and air bases in South Indo-China  
14 as early as July, 1941?

15      A    I learned of Japan's plans in Indo-China --  
16 French Indo-China -- only through instructions.

17      Q    Now, will you answer my question?

18      A    Of my own knowledge, I knew nothing.

19      Q    Will you still answer my question? You did  
20 learn, then, as early as July the 12th 1941 that Japan  
21 contemplated the establishment of air bases and naval  
22 bases in South Indo-China, didn't you?

23      A    No, I didn't. I said that I knew that Japan --  
24 that there were such thoughts in Japan for the first

time through the instructions which I received.  
1 Therefore, if it is true that I did see Weiszaecker  
2 on the 12th of July 1941 and talked to him on that  
3 matter, it must have been based on the instructions  
4 which I received. If I had received no instructions  
5 by that date, the 12th of July 1941, then the report  
6 of that conversation must be false.  
7

Q Well, when do you claim that you first received  
8 such instructions from your Government?  
9

A I don't recall the exact date, but it is  
10 around the time of which you spoke yesterday.  
11

Q Well, what time was that?  
12

A I don't exactly -- I don't recall the exact  
13 date.  
14

Q Well, the approximate date.  
15

A It must have been some time in July. This  
16 matter was not taken up as a subject of discussion at  
17 our embassy in Berlin. We just made one communication  
18 to the German Government on it, and since it was  
19 something that happened quite some time ago, I have  
20 forgotten the date.  
21

THE MONITOR: Japanese court reporter.  
22

23 (Whereupon, the Japanese court reporter  
24 read.)  
25

THE INTERPRETER: Correction: "This matter

1           was not handled by the Berlin Embassy for an extended  
2           period of time. We received only one instruction --  
3           only once did we receive instructions from the  
4           Japanese Government on this matter, and therefore  
5           since it is something that happened quite ~~some~~ time  
6           ago, I have forgotten the exact date."

7           Q    Now, did you know in December, 1941 of the  
8           penetration of Japanese troops into French Indo-China  
9           and did you not approve that action?

10          A    My recollection is that I was never informed  
11          of that, and as to your second point, my opinion was  
12          not consulted on that matter either.

13          Q    Well, you did in fact approve of it, didn't  
14          you?

15          A    I don't think I ever did.

16          Q    I hand you prosecution document No. 3270, which  
17          is a bound volume of the daily issues of the Tokyo Nichi  
18          Nichi, and I ask you to look at the issue of the 27th  
19          day of September 1941.

20          Will you please state whether or not there  
21          appears in that issue a newspaper article, datelined  
22          Berlin, September 25, 1941, quoting a speech which you  
23          made in commemorating the first anniversary of the  
24          conclusion of the Tripartite Pact?

25          A    There is.

1           Q    I believe the article also carries your  
2 picture, doesn't it?

3           A    Yes, there is.

4           Q    You made a speech on that occasion, didn't  
5 you?

6           A    I did not make a speech. I think I talked  
7 to a reporter who came to interview me, but I cannot  
8 take any responsibility for the contents of that  
9 article. And in regard to French Indo-China, also,  
10 from what I have been able to glance through here, all  
11 it says is the Japanese occupation -- the Japanese  
12 advance into French Indo-China... I can't take any  
13 responsibility for the contents of the article at all.

14           MR. TAVENNER: I desire to offer for  
15 identification only the newspaper volume in the hands  
16 of the witness, and from it I desire to introduce in  
17 evidence document 3270-A, an excerpt therefrom, which  
18 is the result of the newspaper interview mentioned.

19           MR. CUNNINGHAM: The document is objected to  
20 for the reasons that it is not properly identified,  
21 not properly authenticated, not proven to be genuine,  
22 not in the language of the accused or of the witness,  
23 not the best evidence in that it was not offered through  
24 the means of the best authority available to introduce  
25 the contents of the document and that would be the

reporter who took -- made the interview.

1 For the further reason that it is not the  
2 best manner in which to introduce evidence of this  
3 kind; that newspaper articles and propaganda issued  
4 by newspapers other than by the individuals have been  
5 discarded by this Tribunal by the wholesale.

6 Certainly the offering of this document violates  
7 all of the rules which have been laid down by this  
8 Tribunal for documents of probative value, for documents  
9 with proper authenticity and for documents which have  
10 a binding effect upon the individuals charged.

11 ACTING PRESIDENT: Mr. Tavenner.

12 MR. TAVENNER: The witness, if the Tribunal  
13 please, has admitted having an interview with a press-  
14 man, as a result of which this articles was printed.  
15 I think that sufficiently identifies it. If there are  
16 parts of it that the witness claims he has a desire to  
17 explain that is another matter. But here is a news  
18 interview which he admits he had.

19 ACTING PRESIDENT: The first document is  
20 admitted for identification only.

21 CLERK OF THE COURT: Tokyo Nichi Nichi for  
22 September, 1941, will receive exhibit No. 3522 for  
23 identification only.

24  
25 (Whereupon, the document above

OSHIMA

CROSS

34,310

1 referred to was marked prosecution exhibit  
2 No. 3522 for identification.)

3 ACTING PRESIDENT: By a majority, the  
4 objection is sustained as to the second document.

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K BY MR. TAVENNER (Continued):

a 1 Q General OSHIMA, were you not of the opinion  
p 2 that the Japanese Government, in establishing the so-  
l 3 called new order in East Asia under the Tripartite Pact,  
e 4 & planned to use armed force for its accomplishment?

K 5 A I did not think so.

n 6 Q Let me see if I can refresh your recollection.  
a 7 Did you not have a conference with Erdsmendorf  
u 8 on or shortly prior to 18 October 1941, in which you  
& 9 stated that in your opinion the Japanese Government, in  
4 10 concluding the Tripartite Pact, must have been certain  
4 11 that the Great East Asiatic area could be achieved only  
4 12 by advance with the sword to the south?

13 A I have no recollection of having stated that.

14 Q Well, do you not recall, and is it not true,  
15 that you further stated in this conference that action  
16 had been prepared and the question was only when it should  
17 be released?

18 A I have no recollection of having made such a  
19 statement.

20 Q Do you not recall, and is it not true, that  
21 you further stated that the attack may possibly be  
22 simultaneous with German operations against Great Britain?

23 A I have no recollection of having made such a  
24 statement.

Q Do you not recall, and is it not true, that you also stated that it would be advantageous to establish a land connection between Germany and Japan by Japan's advance into East Siberia, and that you had proposed this repeatedly to your government?

5 A I have no such recollection, and I should like  
6 to state, furthermore, that, as I told you yesterday, I  
7 had no official conversations with Erdsmendorf at all.  
8 My belief is that he merely pieced together what I told  
9 him at social functions and the like with other infor-  
10 mation which he had received from other sources, and  
11 gave it out in that form.  
12

13        Well, now, did you not state to Erdsmendorff  
14 on another occasion, on or shortly prior to 17 November  
15 1941, your personal view that an advance by Japan toward  
16 the south was unavoidable, especially because of the  
17 pressing need for petroleum?

18 A I have no recollection of having stated that.

19 MR. CUNNINGHAM: I might add my objection now,  
20 that I would like to object to any further questions along  
21 this line for the reason that they are immaterial. What  
22 he said and what diplomatic conversations or chatter  
23 took place between the Ambassador and some minor official  
24 of Germany, is immaterial. In my submission, anything  
25 relative to the diplomatic conversations between any of

1 the Germans is immaterial here; that fundamentally these  
2 accused are charged with agreeing among themselves, not  
3 with outside parties, and no other charge is contemplated  
4 by the Charter.

5 ACTING PRESIDENT: The objection is overruled.  
6 BY MR. TAVENNER:

7 Q You have already answered the question, I be-  
8 lieve?

9 A I have.

10 Q Now, in this conference with Erdsmendorf, did  
11 you not also explain that by advance to the south you  
12 meant the seizure of the island of Borneo, above all,  
13 was necessary?

14 A I never made such an explanation, and further-  
15 more, the interesting thing about that exhibit is that  
16 there are names mentioned in it -- geographical names  
17 mentioned in it which I do not know.

18 Q You do not know Borneo?

19 A No, not Borneo, but other points on the map.

20 Q Well, now, I had not asked you about any other  
21 points on the map, but let us talk about the map a  
22 moment. Did not you and Erdsmendorf examine the map  
23 to determine how far it was from Borneo to the nearest  
24 Japanese troops in South Indo-China, and did you not  
25 determine that the distance was 1,000 kilometers?

A No, I didn't.

Q Did you not also discuss the nature of the  
1 fortifications at Singapore, and did you not make the  
2 suggestion that an attack on Singapore would be most  
3 effective?

4 A No, I have no such recollection.

5 Q Did you not also tell Erdsmendorf that the  
6 three Japanese infantry divisions on the island of  
7 Hainan, you assumed, were being trained for landing  
8 operations and combat in tropical regions?

9 A I have no recollection of having had such a  
10 conversation.

11 MR. TAVENNER: I offer in evidence excerpts from  
12 prosecution documents 2156 and 2157 which were put to  
13 the witness during cross-examination. I do not intend  
14 to read them. The document will be processed and cir-  
15 culated as soon as the work can be completed.

16 THE WITNESS: May I not be shown the Japanese  
17 copy?

18 ACTING PRESIDENT: Just a minute. I did not  
19 catch the name of what these documents are supposed  
20 to be.

21 MR. TAVENNER: I put to the witness during the  
22 course of cross-examination certain excerpts from his own  
23 interrogations. Now I am merely offering the proof of  
24 those excerpts, which is exactly the same thing that

1 was done in connection with the cross-examination of  
2 General KAWABE. Does that fully explain it?

3 MR. CUNNINGHAM: Certainly I object, for the  
4 reason that it serves no useful purpose. It clutters  
5 the record and is mere repetition of what has already  
6 transpired. Certainly it has no probative value  
7 and it is merely compounding the record.

8 ACTING PRESIDENT: If it is already in the  
9 record, what is the use of making this extra?

10 MR. TAVENNER: If the Tribunal please, it  
11 is true that I read, and I am certain I read accurate-  
12 ly, from these interrogations during the course of  
13 cross-examination of the witness, but I think it is  
14 proper, and I should be expected to prove that the  
15 things I read were actually interrogations of this  
16 accused and were an accurate record of his interroga-  
17 tions. In other words, I have confronted the witness  
18 with what we claim he said on interrogation. I am now  
19 proving that he said those things just as I have  
20 stated.

21 ACTING PRESIDENT: Does the document you  
22 have presented contain any more than the questions  
23 and answers you propounded to the witness?

24 MR. TAVENNER: No, sir. The excerpts are con-  
25 fined to those which he denied making or expressed

1                   uncertainty in making.

2                   MR. CUNNINGHAM: In my submission, if there  
3                   is no irregularity there is no necessity for the filing  
4                   of the document, and if there is a contest as to what  
5                   he said on different occasions, that seems to be our  
6                   objection, not the prosecution's.

7                   This is not the best way to do this. If they  
8                   want to prove the authenticity and the genuineness  
9                   of these statements that we made, they should bring  
10                  the person who conducted the interview and they should  
11                  bring the interpreter to show what he actually said and  
12                  what was actually recorded, and then he can correct it  
13                  facing them.

14                  ACTING PRESIDENT: We will recess for fifteen  
15                  minutes.

16                  (Whereupon, at 1050, a recess  
17                  was taken until 1122, after which the  
18                  proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 ACTING PRESIDENT: The objection is sustained  
4 at this time. The prosecution may tender these docu-  
5 ments at the time of their rebuttal and the Tribunal  
6 will consider their admissibility at that time.

7 MR. CUNNINGHAM: Your Honor, that raises  
8 another question which it is suggested be kept open  
9 until full discussion before this full Tribunal and  
10 that is the question of the right of the prosecution  
11 to a rebuttal. Mr. Furness is ready to argue that  
12 question fully before the Tribunal at a time when it  
13 can be agreed upon but he is not here this morning.

14 ACTING PRESIDENT: That question will be  
15 dealt with when it arises when they make their offer  
16 in rebuttal.

17 MR. CUNNINGHAM: Your Honor, is it not a  
18 little more reasonable to determine beforehand in  
19 order that all of the preparation necessary for  
20 rebuttal will be avoided if we adopt the rule that  
21 there is no right of rebuttal?

22 ACTING PRESIDENT: We will consider it at  
23 that time.

24 Captain Kraft.

25 LANGUAGE ARBITER (Captain Kraft): If the

Tribunal please, we submit the following language  
1 corrections: Reference exhibit No. 2619, Paper  
2 No. 3, first paragraph, and record page 22,548,  
3 line 25, page 22,549, lines 1-4. Delete the entire  
4 paragraph and substitute: "In the event of diplomatic  
5 inquiries from third parties, after the conclusion  
6 of the pact, now under negotiation, between Germany,  
7 Italy and Japan, the Japanese Government will make a  
8 verbal explanation in the following sense:"  
9

Exhibit No. 774-A, page 4, line 7, delete  
10 "in" from the phrase "in the expulsion."  
11

12 ACTING PRESIDENT: Mr. Tavenner.

13 BY MR. TAVENNER (Continued):

14 Q General OSHIMA, did you have a conference  
15 with Gaus on or shortly before 11 October 1941 with  
16 regard to the prolongation of the Anti-Comintern Pact?

17 A I don't recall the date and I don't recall  
18 whether my conversation was with Ribbentrop or with  
19 Gaus, but I do know that I did have such a conversation.

20 Q Did you advise the person with whom you  
21 conferred that you had wired to Tokyo repeatedly about  
22 the matter?

23 A I have no such recollection.

24 Q Did not you and the person with whom you  
25 conferred discuss the advisability of playing up the

occasion of prolonging the Anti-Comintern Pact in a  
big manner?

A I have no recollection of having had such a discussion.

Q Did you sign the prolongation agreement in behalf of Japan?

A In accordance with instructions from the Japanese Government I signed the agreement.

Q. That was November 25, 1941, I believe?

A Yes.

Q Was a ceremonial meeting held in commemoration of its signing?

4. I believe a reception was held at Hitler's.

Q Did you speak on that occasion?

A No, I didn't.

Q Did you not have some public word to state at the reception or at the time of the signing?

A No. The form that was adopted when this prolongation was decided on was that each country participating was to make a declaration of its intent, and when Japan's turn came up I made this declaration of Japan's position, and this constituted the prolongation of the agreement. The signing of the pact by writing which was mentioned before is erroneous, and the form which I have just mentioned, this

1 declaration of intent was equivalent to a written  
2 signing of the pact.

3 Q Did any other Japanese speak on that occasion  
4 in regard to the matter in addition to yourself?

5 A No one did.

6 Q Did you speak in German?

7 A Yes.

8 Q I hand you IPS document 4014, entitled  
9 "Japanese speaks German," and I ask you if you made  
10 that statement or speech?

11 (Whereupon, a document was handed  
12 to the witness.)

13 A This is erroneous. The statement I made at  
14 that occasion was a very simple one, merely saying that  
15 the Japanese Government agreed to the prolongation of  
16 the pact.

17 Q Well, did you make the statement that I  
18 handed you?

19 A It is not in my recollection at all. This  
20 which you have handed me is not a declaration but a  
21 speech, a kind of speech that one would make at a  
22 dinner table. It is completely different.

23 Q Well, my question to you was whether or not  
24 you made that speech?

25 A No, I didn't.

1           Q    It is a speech made in commemoration of the  
2    signing of the Anti-Comintern Prolongation Agreement,  
3    is it not?

4           A    As I have told you, I made no speech at the  
5    commemoration reception. I merely made a declaration  
6    at the ceremony which took the place of signing the  
7    pact.

8           Q    All right, let's forget for the moment the  
9    reception to which we referred. Is this not a speech  
10   made in commemoration of the signing of the Anti-  
11   Comintern Prolongation Agreement, as shown from its  
12   context?

13          A    What I am telling you is that I made my  
14   declaration not at any commemoration but at the actual  
15   ceremony which took the place of the actual signing.

16          Q    Will you please answer my question and forget  
17   about previous questions that were asked you. Now,  
18   will you answer my last question, please?

19          A    I understood your question to mean whether or  
20   not this was a speech made at a meeting in commemoration  
21   of the signing of the prolongation of the pact. But  
22   I have no recollection of having made such a speech.

23          Q    I will put the question this way: Does not  
24   this document show on its face that it was a speech  
25   made at some time, or an article written on some

1 occasion in commemoration of the signing of the anti-  
2 Comintern Prolongation agreement?

3       A Yes. As I have told you repeatedly, this  
4 document was not one which was used at the time of  
5 the ceremony equivalent to the signing of the pact,  
6 but it was a speech made at some occasion commemorating  
7 this pact. But I, myself, have no personal recollection  
8 of the speech.

9       Q Does not this document show on its face,  
10 particularly in the last paragraph, that it was a  
11 speech, or article, made in behalf of Japan by someone  
12 who had authority to speak in behalf of Japan?

13       A On reading the last paragraph it is clear  
14 that this speech was made on some occasion commemor-  
15 ating the prolongation of the Anti-Comintern Pact.  
16 But it is also equally clear that this speech was not  
17 a diplomatic pronouncement but was a speech made on  
18 a social occasion. There were several functions in  
19 commemoration of the prolongation of this pact held  
20 after this prolongation was decided on. There were  
21 four or five I believe, but I do not recall ever  
22 having made a speech on any one of those occasions.

23       Q Was this speech made by you on any occasion,  
24 or was it made by someone else with your approval or  
25 acquiescence on any occasion?

1       A    No, I have no recollection of this speech  
2       at all.

3       Q    Do you have any recollection of it as an  
4       article given to the press, or, in other words, do  
5       you have any knowledge of this document whatever?

6       A    No, none whatsoever.

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1           Q    General OSHIMA, this morning you advised us  
2    that you arrived in Berlin on 19 February 1941. Do  
3    you recall whether there was a reception accorded you  
4    at the train upon your arrival?

5           A    No, there was no reception on the train.

6           Q    Who met you at the train?

7           A    The State Secretary for Foreign Affairs.

8           Q    Who was he?

9           A    Weiszaecker.

10          Q    Now, General OSHIMA, I am going to show you a  
11    letter prepared by General Weiszaecker bearing date of  
12    February 17, 1941, and I will ask you if that does not  
13    refresh your recollection on the date as to the date of  
14    your arrival.

15          A    It does refresh my recollection.

16          Q    Then, now will you tell the Tribunal the date  
17    of your arrival?

18          A    It was the 17th of February. I was mistaken.

19          Q    And the telegram that you stated that had arrived  
20    before your arrival actually arrived after your arrival,  
21    didn't it?

22          A    That I do not know because I wouldn't look at  
23    a telegram immediately upon arriving in Berlin. In any  
24    case when I told you it was the 19th of February that  
25    was a mistake in my memory, on my part.

1                   MR. TAVENNER: That concludes the cross-examination, if the Tribunal please.

3                   ACTING PRESIDENT: I have one or two questions  
4                   on behalf of a Member of the Tribunal.

5                   BY THE ACTING PRESIDENT:

6                   Q    Was the non-aggression pact which was concluded  
7                   between Germany and the U.S.S.R. aimed at Japan?

8                   A    No.

9                   Q    What Japanese interests were prejudiced by  
10                   that pact?

11                   A    No interests were prejudiced, none.

12                   Q    For what reasons were you dissatisfied with  
13                   that pact?

14                   A    The first point was that it was against the  
15                   Anti-Comintern Pact. The second point was that this  
16                   pact was concluded in the midst of negotiations for the  
17                   strengthening of the Anti-Comintern Pact and without  
18                   previous notice to Japan. Those were the two points  
19                   which were the reasons for my objections.

20                   Q    Did you not advocate a declaration of war  
21                   against the U.S.S.R. by Japan and Germany?

22                   A    Do you mean during the war, your Honor?

23                   Q    At any time.

24                   A    No.

25                   ACTING PRESIDENT: That is all. Mr. Cunningham.

1 MR. CUNNINGHAM: If your Honor please, if there  
2 are no other counsel who have any additional cross-  
3 examination, I have a few questions or one question on  
4 redirect. I should like to clarify a point which came  
5 up during the cross-examination of this witness on  
6 last Friday, November 28, transcript pages 34,130-131,  
concerning the negotiations of 1938, 1939.

BEDIRECT EXAMINATION

BY MR. CUNNINGHAM:

10 Q Mr. OSHIMA, on page 21 of your affidavit you  
11 testified as to the instruction received by you at the  
12 end of March 1939 that the Japanese government accented  
13 in principle the duty of military assistance in case  
14 Germany was attacked by countries other than Soviet  
15 Russia. As suggested by Mr. Tavenner, in your interro-  
16 gation, exhibit 497, transcript page 6,065, it appears  
17 that you stated that according to the same instruction  
18 the aid would be confined to military advice such as  
19 trading of intelligence and so forth. Would you ex-  
20 plain the discrepancy between the two statements?

21       4. First of all I think there was a misinterpreta-  
22       tion. The first mistake I believe was that "military  
23       assistance" was translated "military advice."

24 The instructions I received from Japan were to  
25 the effect that Japan would accept the duty of giving

1 military assistance. As I stated at the beginning of  
2 my interrogation on this point, when I was receiving --  
3 when I was being interrogated by the prosecution, the  
4 contents of our talks, of my statements were abridged.  
5 The instructions regarding the details of military  
6 assistance or entering the war such as trading intel-  
7 ligence reports or of giving bases, these instructions  
8 came later. When I was speaking of these instructions  
9 I abridged the contents of those instructions and,  
10 therefore, a misunderstanding arose and the first and  
11 second instructions were confused when they appeared  
12 on the record. In this part of the interrogatories,  
13 since the matters were very involved, there were other  
14 points on which matters were confused, on which there  
15 were mistakes. There were many involved matters, many  
16 mistakes, but since it was a very complicated process  
17 to try to correct these errors I decided to make a  
18 general correction in my affidavit, of all these matters  
19 in my affidavit.

20 ACTING PRESIDENT: We will adjourn to 1:30.

21 (Whereupon, at 1200, a recess was  
22 taken.)

#### AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1345.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

8 H I R O S H I O S H I M A, an accused, resumed  
9 the stand and testified through Japanese in-  
10 terpreters as follows:

11 ACTING PRESIDENT: With the Tribunal's  
12 permission the accused SHIMADA and HIRANUMA will be  
13 absent from the courtroom the first period of the  
14 afternoon session conferring with their counsel.

Mr. Cunningham.

16 MR. CUNNINGHAM: That concludes the re-  
17 direct examination of this witness, and if there is  
18 no objection to reading the following citations from  
19 the record as corroboration of the evidence of this  
20 witness, why I suggest that he can be excused on the  
21 condition that we be permitted to recall him if and  
22 when we decide whether or not to examine him further  
23 on the documents which were introduced by the prose-  
24 cution on cross-examination.

ACTING PRESIDENT: That is rather an unusual

request.

1                   MR. CUNNINGHAM: Well, you see, your Honor,  
2 our defense was based upon the case as the prosecution  
3 made it out in their part of the case, and naturally  
4 we haven't had an opportunity to peruse these docu-  
5 ments and to explore the other documents which we  
6 have, which will explain and defeat the purpose,  
7 perhaps, of the documents of the prosecution which  
8 were introduced in cross-examination. I merely want  
9 it understood that the witness is not excused per-  
10 manently but on that condition.

12                 ACTING PRESIDENT: It is suggested to me  
13 that if you pursue that course that you will have to  
14 present your evidence by affidavit in advance, and the  
15 Court can determine at that time whether or not it  
16 will be allowed to be admitted.

17                 MR. CUNNINGHAM: Well, it occurs to me that  
18 we should be no more bound to serve the evidence by  
19 affidavit than we would be to serve the questions  
20 which we were going to ask on redirect examination  
21 based upon the cross-examination, any more than the  
22 prosecution should have been required to serve upon  
23 us their cross-examination. I submit that under a  
24 fair interpretation of the rule they should have been  
25 required to do so, but we shouldn't be required to do

1 so either.

2        We are getting into a moot question again,  
3 your Honor, because I am not sure I am going to ask  
4 him back. I merely want to preserve my record.

5        THE PRESIDENT: Well, I am not going to  
6 make a ruling on that without the vote of the  
7 Tribunal. Personally, I do not agree with you. We  
8 will deal with the matter when it arises.

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1                   MR. CUNNINGHAM: I ask that the witness be  
2 returned to his usual place.

3                   ACTING PRESIDENT: I have just been handed a  
4 few more questions by a Member of the Tribunal.

5                   Did you conduct negotiations in Berlin with  
6 the aim of obtaining a piece of land and a house for  
7 the Japanese Embassy where you could carry out an in-  
8 telligence and subversive activities against the  
9 U.S.S.R.?

10                  THE WITNESS: When I was military attache,  
11 one of my subordinates did buy a house.

12                  ACTING PRESIDENT: The next question: Did you  
13 buy a piece of real estate in Falkensee, and in whose  
14 name was it bought?

15                  THE WITNESS: I think it was bought in the  
16 name of an officer in the Ministry of National Defense.

17                  ACTING PRESIDENT: Whose money paid for it?

18                  THE WITNESS: The Japanese Army.

19                  ACTING PRESIDENT: Do you confirm the fact  
20 that the above-mentioned estate was then the headquarters  
21 of Japanese White Russian spies where anti-Soviet  
22 pamphlets were printed for conveying to the Soviet  
23 Russia and where the different subversive measures have  
24 been worked out against the U.S.S.R.?

25                  MR. CUNNINGHAM: I should like to object to

1 that question for the reason that it is immaterial and  
2 it is common knowledge that Soviet Russia has the same  
3 activities going on in practically every country in  
4 the world and we should not have to defend against  
5 something like that.

6 ACTING PRESIDENT: The objection is overruled.

7 THE WITNESS: I did hear that a very small  
8 number of people were carrying on printing work in that  
9 house. But I do not know what the effects of their  
10 work were, what they achieved. Furthermore, I do not  
11 think that house was ever made the headquarters for  
12 any subversive activities.

13 ACTING PRESIDENT: Are you aware of any facts  
14 when in 1938 and 1939 the Japanese Embassy in Berlin  
15 sent saboteurs and terrorists into the U.S.S.R. by way  
16 of Turkey in order to kill Stalin?

17 MR. CUNNINGHAM: I should like to object to  
18 that question for the reason that it anticipates a  
19 political offense for which the accused is not on trial  
20 here and is certainly immaterial in this proceeding.

21 ACTING PRESIDENT: That objection is overruled.

22 THE WITNESS: There are no such facts.

23 ACTING PRESIDENT: Did you have a talk with  
24 Himmler on 31 January 1939 to the effect that, together  
25 with German spies and with the assistance of White

OSHIMA

34,333

1 Russians, you were undertaking a large-scale sabotage  
2 and terroristic work and that you sent ten of your  
3 agents with bombs across the Caucasus in order to  
4 assassinate Stalin?

5 MR. CUNNINGHAM: That is objected to as repe-  
6 tition.

7 ACTING PRESIDENT: Objection overruled.

8 THE WITNESS: I never had any such conversation  
9 with Himmler.

10 ACTING PRESIDENT: That is all the questions  
11 by the Tribunal.

12 Have you any further questions?

13 MR. CUNNINGHAM: No further questions at this  
14 time, your Honor.

15 ACTING PRESIDENT: The witness will take his  
16 place in the dock.  
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(Whereupon, the witness was excused.)

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1 For these reasons, I offer objection to the  
2 introduction or reading of this document in evidence.

3 MR. CUNNINGHAM: Your Honors, a word of  
4 explanation may alleviate the situation here.

5 In the first place, we have listened to the  
6 prosecution interrupt our defense case time and time  
7 again by arguing their case by supporting the cross-  
8 examination and the additional examination by references  
9 to the exhibits and by references to the court page  
10 records.

11 ACTING PRESIDENT: There is no objection to  
12 your making references to pages of the transcript or  
13 the exhibit. The argument that you have added to it  
14 is what the prosecution objects to.

15 MR. CUNNINGHAM: That was my second point,  
16 your Honor.

17 In the preparation of our defense case we had  
18 affidavits and documents which were lengthy and which  
19 would have established these facts which are established  
20 by a mere sentence here and there and we devised this  
21 as a time-saver to prevent putting in this additional  
22 corroborating evidence.

23 Now I admit that this might be proper in  
24 summation, but I submit that it will save the Tribunal  
25 and us a great deal more time if, while the evidence

1 and the affidavit are fresh in the minds of the  
2 Tribunal, we can by mere reference refresh your  
3 recollection rather than in summation have to go  
4 in broad detail to bring back to light the things  
5 which were mentioned in the affidavit. I think it  
6 is a time-saver in both respects.

7 And in conclusion I admit that there are a  
8 couple of quotations from the record, but we listened  
9 here to 97 pages in the KIDO affidavit as reference to  
10 the record and refreshing recollection. I only have  
11 three pages here which will serve that purpose.

12 ACTING PRESIDENT: It is not a question of  
13 the number of pages. The question is what is in those  
14 pages.

15 MR. CUNNINGHAM: Well, I suggest that I can  
16 cut out the quotations as I go through and hammer it  
17 down a couple of sentences.

18 ACTING PRESIDENT: By a majority the objection  
19 is overruled to that part, except the mere citations  
20 to the exhibits and the pages of the transcript.

21 I said that the objection was overruled. I  
22 meant to say that the objection was sustained.

23 MR. CUNNINGHAM: With the exception?

24 ACTING PRESIDENT: With the exception.

25 MR. CUNNINGHAM: Well, that is the way I

1 understood you, and I was about to scratch out all  
2 the material except the references.

3 As to paragraph 6, (5), b, concerning  
4 OSHIMA's understanding of the purpose of the Anti-  
5 Comintern pact:

6 1) Exhibit 484, transcript pages 22,480-22,482  
7 and 22,483-22,488.

8 I will eliminate the next.

9 2) Exhibit 2762, transcript page 24,739.

10 3) Exhibit 486-A, transcript page 5,976.

11 Does that comply with your ruling?

12 ACTING PRESIDENT: Go ahead.

13 MR. CUNNINGHAM: (Continuing)

14 4) Exhibit 2487, transcript page 20,623, and  
15 exhibit 2488, transcript pages 20,671-20,675.

16 5) Exhibit 2497, transcript pages 20,818-9.

17 As to paragraph 7 of the affidavit:

18 Exhibit 2762, transcript page 24,739.

19 3. As to paragraph 9, (8), concerning...

20 1) Exhibit 2619, transcript page 22,542.

21 Page 2, or page 5B here, but reading page 2:

22 2) Exhibit 2735-A, transcript page 24,290.

23 4. As to paragraph 10, (2):

24 Exhibit 506, transcript pages 6124-6.

25 5. As to paragraph 11, (2), transcript pages

24,554-24,555.

1       6. As to paragraph 12, (1), exhibit 2744,  
2 transcript page 24,402.

3       7. As to paragraph 12, (2), exhibit 2744,  
4 transcript page 24,404.

5       8. As to paragraph 14, (1):

6           1) Exhibit 2762, transcript pages  
7 24,740-1.

8           2) Transcript pages 26,678-26,683.

9           3) Transcript pages 26,919-26,920, and  
10 26,916.

11       9. As to paragraph 15, (3):

12           Exhibit 582, transcript pages 6543-4.

13       10. As to paragraph 16:

14           Exhibit 2762, transcript page 24,742.

15       11. As to paragraph 17, (1):

16           1) Testimony of witness YAMAMOTO,  
17 transcript pages 26,119-26,121.

18           2) Exhibit 3000, transcript pages  
19 26,570-1, affidavit of Admiral NOMURA.

20       12. As to paragraph 17, (5):

21           1) Exhibit 2762, transcript page 24,742.

22           2) Exhibit 2763, transcript page 24,749,  
23 testimony of Schmidt in Nurnberg Trial.

24       13. As to paragraph 18 of the affidavit,

testimony of Admiral NOMURA, transcript page 26,599-26,600.

14. As to paragraph 19:

Affidavit of Admiral NOMURA, exhibit  
3000, transcript page 26,569.

15. As to paragraph 20:

9 I would like to suggest that items 30 and 31  
10 on the order of proof have been eliminated.

11 Defense documents 2819, 2819-A, 2819-B and  
12 2819-C are offered for the purpose of showing exchange  
13 of views concerning the appointment of Ambassador OSHIMA  
14 before his first tour of duty and the normal manner in  
15 which his appointment took place.

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1 ACTING PRESIDENT: The documents will be  
2 admitted.

3 CLERK OF THE COURT: Defense document 2819  
4 will receive exhibit No. 3523, defense document  
5 2819-A will receive exhibit No. 3523-A, defense  
6 document 2819-B will receive exhibit No. 3523-B,  
7 and defense document 2819-C will receive exhibit  
8 No. 3523-C.

9 (Whereupon, the documents above  
10 referred to were marked defense exhibit  
11 Nos. 3523, 3523-A, 3523-B, and 3523-C,  
12 respectively, and received in evidence.)

13 MR. CUNNINGHAM: I now offer to read in  
14 evidence exhibit 3523:

15 "September 16, 1938  
16 "From: Foreign Minister UGAKI  
17 "To: Premier KONOYE  
18 "Subject: Proceedings in regard to the  
19 Emperor's appointment of Lieutenant General OSHIMA  
20 as Japanese Ambassador to Germany.  
21

22 "With reference to the matter of appoint-  
23 ing Lieutenant General OSHIMA Hiroshi, now serving  
24 as a military attache to the Japanese Embassy in  
25 Germany, to the post of Japanese Ambassador to  
Germany, as already arranged with Your Excellency

informally, I rely upon Your Excellency to obtain  
1 the Emperor's approval at Your Excellency's earliest  
2 convenience so that I would be able to proceed with  
3 this matter. I am looking forward to Your Excel-  
4 lency's reply.

5 "(signed) Minister

6 " " Vice Minister

7 " " Chief of the Personnel Department

8 "(seal) Administrative Chief

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10 "Certificate of Source and Authenticity

11 "I, HAYASHI Kaoru, who occupy the post of  
12 Chief of the Archives Section of the Foreign Office,  
13 hereby certify that the documents hereto attached,  
14 written in Japanese, consisting of 6 pages and con-  
15 taining the following letters, are exact and author-  
16 ized copies of excerpts from official documents in  
17 the custody of the Japanese Government (the Foreign  
18 Office).

19 "1. Letter of informal request from Foreign  
20 Minister UGAKI addressed to Premier KONOYE, dated  
21 September 16, 1938

22 "2. Letter from Premier KONOYE to Foreign  
23 Minister UGAKI, dated September 22, 1938

24 "3. Letter of inquiry, dated October 6,

1 1938, from Foreign Minister KONOYE to War Minister  
2 ITAGAKI regarding the Emperor's appointment of  
3 Lieutenant General OSHIMA as Ambassador

4 "4. JIN O No. 1774, dated October 7, 1938,  
5 from War Minister ITAGAKI addressed to Foreign  
6 Minister KONOYE in reply to the inquiry regarding  
7 the Emperor's appointment of Lieutenant General  
8 OSHIMA as Ambassador.

9 "Certified at Tokyo," and so forth.

10 I now offer to read into evidence exhibit  
11 3523-A:

12 "From: Premier KONOYE  
13 "To: Foreign Minister UGAKI  
14 "Your request to take necessary steps in  
15 regard to Lieutenant General OSHIMA Hiroshi is  
16 hereby acknowledged. I beg to inform you that the  
17 Imperial approval has been obtained informally on  
18 this 22nd inst."

19 I now offer to read into evidence exhibit  
20 3523-B:

21 "October 6, 1938  
22 "From: Foreign Minister KONOYE  
23 "To: War Minister ITAGAKI  
24 "Subject: Inquiry about the Emperor's  
25 appointment of Lieutenant General OSHIMA as

1 Japanese Ambassador to Germany

2 "As it is desired to recommend to the  
3 Throne the name of Lieutenant General OSHIMA  
4 Hiroshi, Junior Fourth Court Rank, 2nd Order of  
5 Merit, as Envoy Extraordinary and Ambassador Pleni-  
6 potentiary to Germany, I wish to ascertain whether  
7 it is objectionable on the part of your Ministry.

8 If not, may I trouble you to send me a copy of his  
9 curriculum vitae?

10 "(signed) Vice-Minister

11 "Chief of the Personnel Department

12 "(seal) Administrative Chief"

13 I now offer to read in evidence exhibit

14 3523-C:

15 "October 7, 1938

16 "From: War Minister ITAGAKI, Seishiro

17 "To: Foreign Minister Prince KONOYE Fumimaro

18 "Subject: Reply to inquiry regarding the

19 Emperor's appointment of Lieutenant General OSHIMA

20 as Ambassador

21 "With reference to the inquiry in your  
22 letter of JIN KIMITSU GO GAI dated October 7th,  
23 there is no objection on the part of War Ministry.

24 "Notice: His curriculum vitae is attached  
25 hereto."

1                   We offer in evidence the excerpt from the  
2 interrogation of Yosuke MATSUOKA for the purpose of  
3 showing the lack of participation of Ambassador  
4 OSHIMA in the determination of the foreign policy  
5 of Japan during the time MATSUOKA occupied the  
6 post of Foreign Minister.

7                   ACTING PRESIDENT: Mr. Tavenner.

8                   MR. TAVENNER: If the Tribunal please, the  
9 prosecution objects to the introduction of this  
10 excerpt from the interrogation of MATSUOKA. A  
11 similar excerpt from the interrogation of MATSUOKA  
12 was offered on 17 June 1947 and rejected at record  
13 24,570. The matter was fully heard by the Tribunal.  
14 It was fully argued, and I assume it is not neces-  
15 sary to reargue the same question.

16                   ACTING PRESIDENT: Personally, I do not  
17 remember the real ground for not admitting the  
18 document.

19                   MR. TAVENNER: The objection was based on  
20 the ground that the interrogatories that had been  
21 taken of the accused should not be admitted in  
22 evidence except as to the accused themselves. That  
23 was the ruling of the Tribunal at a very early stage  
24 of the prosecution's case. The prosecution was not  
25 entitled to do that under the ruling of the Tribunal,

1 and the position was taken, when the other excerpt  
2 was produced, that it applied also to the defense.  
3 The prosecution used no part of the interrogation  
4 of this accused.

5 The President of the Tribunal, in announcing  
6 the decision, stated as follows:

7 "We have fully considered that matter, and  
8 by a majority we came to the conclusion that the  
9 interrogation of any of the accused can be used for  
10 or against himself only. That is what it amounts to.  
11 Of course, where one of the other accused heard  
12 what he said and admitted its truth, it could be  
13 used against him, but we know of no such case yet.  
14

15 "MR. COMYNS CARR: MATSUOKA no longer being  
16 amongst the accused, I assume the ruling means that  
17 his interrogation cannot be used by either side.  
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19 "THE PRESIDENT: That is the Court's  
20 decision, and we will hear no discussion about it."  
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ACTING PRESIDENT: Does the fact that

MATSUOKA is dead make any difference?

1 MR. TAVENNER: MATSUOKA was dead at the time  
2 of this decision of the Tribunal.

3 MR. CUNNINGHAM: Well, if your Honor please,  
4 if Mr. MATSUOKA were alive today I presume he could  
5 answer questions that are contained in here, and  
6 the mere fact that he has passed away should not  
7 deprive us of the valuable use of his words.

8 The second point is that the evidence  
9 previously was offered in the general phase of the  
10 case and not in behalf of one of the defendants who  
11 has benefitted by his statement.

13 The third suggestion is that if the evidence  
14 would have been admissible against any of the other  
15 accused, certainly it should be admissible in favor  
16 of them, and the fact that the accused was not within  
17 hearing distance to hear what MATSUOKA said should  
18 not determine the probative value of the words of  
19 MATSUOKA on that occasion.

20 It would require a mighty strict rule of  
21 evidence to preclude evidence of this kind when it  
22 is helpful to an accused who is on trial. I feel  
23 quite sure that the President of the Tribunal in  
24 announcing his decision in that former matter did  
25 not contemplate a situation in which the evidence

1 could be of use to mitigate or to acquit one of the  
2 accused. I argue that this evidence has high pro-  
3 bative value. It is a statement made by the superior  
4 officer of the accused on trial, and certainly has  
5 more bearing than any evidence I could imagine to be in  
6 favor of an accused. We have listened to the prosecu-  
7 tion's evidence, statements by MATSUOKA which are  
8 deemed by the prosecution to be harmful to these  
9 accused. We ask that the Court entertain this docu-  
10 ment, which is made by MATSUOKA and which is helpful  
11 to the accused.

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MR. TAVENNER: If the Tribunal please, there was a second ruling by the Tribunal on the same type material, which occurred the day after the ruling that I referred to a moment ago, and which I would like to present to the Tribunal if I am permitted to do so.

ACTING PRESIDENT: We will be glad to have it.

7 MR. TAVENNER: On the following day Mr.  
8 Cunningham presented a statement made by MATSUOKA in  
9 January 1946 for admission in evidence, and in ruling  
10 upon it the President of the Tribunal stated, in reject-  
11 ing the document, "It is clearly covered by the Court's  
12 well-considered decision given yesterday, the decision  
13 given after hearing the parties fully."

24 ACTING PRESIDENT: I have a request from one  
25 of the Members of the Tribunal for a consideration of  
this matter in chambers. Mr. Tavenner, would you give

1 the page numbers that you referred to, and also the  
2 dates?

3 MR. TAVENNER: The first page number is  
4 24,570 to 24,572, and the second reference that I made  
5 was at page 24,576.

6 ACTING PRESIDENT: Have you anything to take  
7 up in five minutes?

8 MR. CUNNINGHAM: I think the next document  
9 will be objected to.

10 MR. TAVENNER: Yes, it will be.

11 MR. CUNNINGHAM: We will be in a long session  
12 on that, too.

13 ACTING PRESIDENT: We will recess until three  
14 o'clock.

15 (Whereupon, at 1440, a recess was  
16 taken until 1515, after which the proceedings  
17 were resumed as follows:)

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MARSHAL OF THE COURT: The International

1 Military Tribunal for the Far East is now resumed.

2 ACTING PRESIDENT: By a majority the Tribunal  
3 adheres to its former decision and sustains the objec-  
4 tion.

5 MR. CUNNINGHAM: I now offer in evidence  
6 defense document 2854, an excerpt from the official  
7 transcript of the trial at Nuernberg, which contains  
8 a part of Ribbentrop's testimony in that Tribunal as  
9 of March 30, 1946. The parent document is already  
10 marked for identification as exhibit 2692. This  
11 document is now offered with the part of defense  
12 document 1449 which was tendered in the Tri-Partite Pact  
13 phase and rejected, transcript pages 24,587-24,600,  
14 after a very long argument. The reason why I offer  
15 it again is that this document specifically refers  
16 to OSHIMA and therefore I think it would be admissible  
17 to the individual phase of the case.

18  
19 ACTING PRESIDENT: Mr. Tavenner.

20 MR. TAVENNER: If the Tribunal please, it  
21 is true it was rejected before but at one stage of  
22 the proceedings the prosecution failed to object to  
23 four sentences of this document which were introduced  
24 in evidence as exhibit 2692-A, record 23,557, and  
25 having failed to object to that and the document

1 having been admitted in part, to that extent we  
2 feel that we should not object to the admission of  
3 this document now except to the extent of the four  
4 sentences already read in evidence, merely for the  
5 purpose of not having them read twice. I am making  
6 this statement only for the purpose of demonstrating  
7 that we are not retreating or in any way abandoning  
8 the general objection to the use of this type of  
9 testimony.

10 . ACTING PRESIDENT: Having been admitted in  
11 evidence once, I see no reason why it should not be  
12 again as to those four sentences. The document will  
13 be admitted; objection overruled.

14 CLERK OF THE COURT: Defense document 2854  
15 will receive exhibit No. 3524.

16 (Whereupon, the document above  
17 referred to was marked defense exhibit  
18 No. 3524 and received in evidence.)

19 MR. CUNNINGHAM (Reading): "Excerpt from  
20 exhibit No. 2692, official transcript of the Inter-  
21 national Military Tribunal at Nurnberg, Germany, on  
22 30 March 1946, (Pages 6814-6816)."

23 "Witness: Joachim von Ribbentrop.

24 "Direct Examination by Dr. Horn.

25 "Q Did Japan, before her attack on Pearl

1 Harbor, notify Germany of her intention?

2 "A No, that was not the case. At that  
3 time I tried, as far as Japan was concerned, to move  
4 her to attack Singapore. A peace with England did not  
5 seem possible, and I did not know in a military way  
6 which measure would be possible to reach this aim.

7 "The Fuehrer instructed me, at any rate, in  
8 a diplomatic way to do everything to reach or bring  
9 about a weakening of the position of England in order  
10 that the peace might be brought about.

11 "We believed that this could be done best  
12 through an attack by Japan on the strong position of  
13 England in East Asia. Therefore, I tried to influence  
14 Japan to attack Singapore.

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"After the outbreak of the German-Russian  
1 War, I also tried to have Japan attack Russia, for in  
2 such a way I saw a quick ending of the war. Japan,  
3 however, did not do that. Rather I should say, she  
4 did neither the one thing we wanted nor the other,  
5 but she did a third thing. She attacked the United  
6 States at Pearl Harbor. This attack was for us a  
7 complete surprise. We had considered the possibility  
8 that Japan might attack Singapore or perhaps Hong  
9 Kong or attack England, but we never considered that  
10 she should attack the United States or that was any-  
11 thing that we wanted; that is, the possibility of an  
12 attack in England, but if that would happen, the  
13 United States would intervene. That was the question  
14 which we considered often at length but we hoped that  
15 this would not happen and that America would not  
16 intervene. That attack on Pearl Harbor was told in  
17 Berlin -- or rather, I received knowledge of it  
18 through the press and then I received Reuter's message  
19 from the Japanese Ambassador OSHIMA. All other re-  
20 ports or proofs or anything else are completely untrue  
21 and I would like to testify to that under my oath.  
22 I would like to go further than that and concur and  
23 assert that even this attack was a surprise to the  
24 Japanese Ambassador -- as he told me, it was a com-

plete surprise to him also."

1 I would like to suggest, your Honor, that  
2 there isn't, in my submission, sufficient difference  
3 between the document just admitted and the document  
4 rejected just prior to this.

5 I go into the supplementary order of proof.

6 In the following series of documents it is  
7 suggested that International Law regulates the privi-  
8 leges and immunities which follow the official acts of  
9 an ambassador. It is contended that the ordinary  
10 consequences do not follow his acts but attach only  
11 to his office and to his government; that his  
12 exemption from personal responsibility is permanent;  
13 that his privilege of freedom from trial binds third  
14 powers as well as the nation to which he is accred-  
15 ed; that the law is so well established that mere  
16 reference here to the general rules is all that will  
17 be made. A brief of the cases supporting the theory  
18 will be filed with the argument on summation. The  
19 following documents are presented only for the purpose  
20 of emphasizing the present state of the law.

21 I want to make an additional statement.

22 Before I begin this section of the individual defense,  
23 permit me to say that neither the accused nor the  
24 Japanese defense counsel for him wish to have an

1                   acquittal solely on the claim of ambassadorial im-  
2                   munity.

3                   MR. TAVENNER: If it please the Tribunal,  
4                   I dislike to interrupt counsel, but this certainly  
5                   is argument which does not have a place in this  
6                   phase of the case; and, therefore, I object to it.

7                   MR. CUNNINGHAM: I submit, your Honor,  
8                   that this is a matter of courtesy to the Japanese  
9                   counsel and to the accused himself, and it should  
10                   be permitted to go into the record.

11                   ACTING PRESIDENT: The proper place for a  
12                   statement of that kind is in the summation. It can  
13                   go into the record at that time.

14                   MR. CUNNINGHAM: Your Honor, I did want to  
15                   have . . . understood, before I presented the evidence,  
16                   the condition on which it was presented, if I might.

17                   ACTING PRESIDENT: You told us that.  
18                   Objection sustained.

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1 MR. CUNNINGHAM: To corroborate the evidence  
2 of the accused OSHIMA in that it was his duty to carry  
3 on his relations with the German Foreign Minister and  
4 that his acts were recognized in international law as  
5 acts of state and in no sense personal, we offer defense  
6 document 2728-A, an excerpt from "International Law by  
7 Fenwick," second edition. Fenwick is one of America's  
8 outstanding scholars of international law and is now  
9 legal adviser in our State Department. We offer to  
10 read only parts of this excerpt.

11 ACTING PRESIDENT: Mr. Tavenner.

12 MR. TAVENNER: If the Tribunal please, the  
13 prosecution objects to this document and to each of  
14 the next fourteen documents on the present order of  
15 proof on the grounds,

16           1. That it is not necessary to prove the  
17 principles of international law before this Tribunal  
18 as has been repeatedly determined by the Tribunal,  
19 record 17,601 to 17,606 and 17,665 to 17,685, and also  
20 at 17,688 to 17,689.

22           2. These documents present purely legal argu-  
23       ments which are not proper at this stage of the proceed-  
24       ings. These excerpts from and citations of authorities  
25       if pertinent should be submitted in the final summation  
          as, of course, they will be.

1 It has been almost axiomatic from the very  
2 beginning of this trial that legal principles should not  
3 be made the subject of evidence but should be alluded  
4 to and would be considered by the Tribunal in summation.

5 MR. CUNNINGHAM: Well, your Honor, I shall take  
6 up the objections as they are suggested.

7 The first is that the present state of the law  
8 is not evidence. It is my submission that the prosecu-  
9 tion has made the election as to the manner in which the  
10 law of this case shall be provable by offering first  
11 the conventions upon which the prosecution rely as  
12 part of the law. If it is not necessary in this case  
13 to prove the law then all of these conventions and  
14 agreements which the prosecution has tendered are super-  
15 fluous.

16 The second proposition is that the prosecution  
17 has submitted as part of the law of this case a charter,  
18 written presumably by the prosecution, which they say  
19 states the law of the case, and if the law of this case  
20 is not provable as any other fact is provable then the  
21 Charter, having been filed as exhibit 9 in this case,  
22 is superfluous.

23 My third point is that there being no code of  
24 international law in a court hearing a case of first  
25 instance on a question of international law must find

1 the law before it can fit the facts to that law. In  
2 order for the Court to properly determine what is the  
3 law in this case it must analyze four things: first,  
4 conventions; second, treaties and agreements; third,  
5 the writings of experts and scholars which is part of  
6 the evidence just presented here.

7 ACTING PRESIDENT: There is no question but  
8 that you have a right to argue the law. The only  
9 question is what is the proper time.

10 MR. CUNNINGHAM: That is my next point, your  
11 Honor. The fourth thing which it is necessary for  
12 the Court to determine before it can find the law is  
13 the cases which have been decided already and that is  
14 the thing which I propose to prove and to argue upon  
15 summation, but it is the state of the law, the actual  
16 existence of the law, which is a provable fact as any  
17 other fact before an international tribunal, different  
18 than an ordinary municipal or national court which has  
19 its code and its statutes to guide it, something which  
20 this Tribunal does not have and which no international  
21 tribunal has had in the past.

22 ACTING PRESIDENT: We trust the Tribunal will  
23 have all that included in your final summation.

24 25 By a majority the Tribunal sustains the objection.

MR. CUNNINGHAM: Well, your Honor, I had  
1 presumed that I would be permitted to give my final  
2 and climactic point before I was cut off.

3 ACTING PRESIDENT: The Tribunal has felt for  
4 some time that there has been too lengthy arguments on  
5 questions of admission of evidence.

6 MR. CUNNINGHAM: Well, your Honor, I presume that  
7 leaves me one of two courses to follow: one, to offer  
8 my documents into evidence and have them marked for  
9 identification in order that I can make my record of  
10 offer of proof.

11 ACTING PRESIDENT: My recollection is that  
12 the clerk has a rejected document file which carries  
13 the same implications.

14 MR. CUNNINGHAM: Well, then, I presume your  
15 ruling just applies to the first document, 2728-A.  
16

16 ACTING PRESIDENT: It applies to all fourteen.  
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18 You can make your tender. The ruling applies to all  
19 fourteen.

20 MR. CUNNINGHAM: Well, your Honor, I can't see  
21 how you can reject a document before it is offered.

22 ACTING PRESIDENT: We will put it the other  
23 way: The objection will be sustained when the other  
24 documents are offered. I thought that you would make  
25 your tender of all fourteen at once and let them go

1 on the rejected calendar or whatever they may call it.

2 MR. CUNNINGHAM: Well, I am anxious to save  
3 time on the matter. If my offer of proof as written  
4 in my supplementary running commentary and order of  
5 proof can be transcribed into the record the same as if  
6 I had read the matter, I have no complaint about that.  
7 Otherwise I will offer the documents in the way in  
8 which I have them arranged.

9 MR. TAVENNER: If it please the Tribunal,  
10 such a procedure would be just an evasion of the  
11 Tribunal's ruling. If a document is not admissible in  
12 evidence the comments as to what the document contains  
13 is not admissible as part of the transcript. It would  
14 seem to me that such a procedure would only be a subter-  
15 fuge to state in the record the contents of a document  
16 which the Tribunal has ruled is not admissible.

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1 MR. CUNNINGHAM: Well, that gets into one  
2 of the fundamental questions, your Honor. If there  
3 is a review of this trial, if there is a review of  
4 this proceedings, the reviewing authority has a  
5 right to know what evidence was rejected which was  
6 offered in behalf of the accused, and they also have  
7 a right to know for what purpose that evidence was  
8 offered. And anyone who has practiced law knows that  
9 proof and evidence is not to be submitted in summation.

10 ACTING PRESIDENT: If you will read the front  
11 page, it is not numbered, of your supplementary or-  
12 der of proof for 28 November, which describes the docu-  
13 ments, and make a tender of those, that will be suf-  
14 ficient.

15 MR. CUNNINGHAM: Well, your Honor, if you  
16 were a reviewing authority and would be satisfied  
17 with that sort of an offer of proof on the part of  
18 a counsel who was presenting evidence in a case, and  
19 would consider that the court had no right to know  
20 any more than what that page says as to what the ac-  
21 cused wanted to present as evidence, then I am per-  
22 fectly willing that that shall be accepted. But  
23 that certainly would not be the standard I would fol-  
24 low,

ACTING PRESIDENT: It happens you are not a

Member of the Tribunal, and we do not care for any  
1 more remarks of that nature.

2 MR. CUNNINGHAM: Well, your Honor, I am an  
3 officer of this court, and I must do my duty as I  
4 see it.

5 Now, that completes the presentation of the  
6 documents and the evidence in the individual case  
7 of Ambassador OSHIMA, with the exception of the right  
8 to recall the witnesses and to introduce more docu-  
9 ments at such time as we make application to the  
10 Court in answer to the documents introduced by the  
11 cross-examination in surprise.

13 ACTING PRESIDENT: With reference to the  
14 reservation made in the last part of your statement,  
15 we ruled on that this morning.

16 Do you not care to make a tender of these  
17 documents here by document numbers for the record?

18 MR. CUNNINGHAM: Yes, thank you very much.  
19 In the discussion I had overlooked the matter.

20 I offer in evidence defense document 2793,  
21 the excerpt from the Digest of International Law by  
22 Hackworth.

23 ACTING PRESIDENT: Same ruling.

24 MR. CUNNINGHAM: Excerpts from Experts on  
25 International Law, 2827-A.

Excerpt from American Journal of International Law, 2827-H.

Excerpt 2727-B, Feller & Hudson. I might suggest that that is useless, there being no page number or anything that it refers to. The running commentary gives the page and the section and the chapter and so on.

Defense document 322, Draft Convention of  
1932.

10 Defense document 323, Havana Convention.

11 Excerpt 2728-B, excerpt from Feller & Hudson.

2713, excerpt from Shirer's Berlin Diary.

13 I might say that that is not an excerpt from an inter-  
14 national law authority and should not come under the  
15 objection made by Mr. Tavenner. But I am not going to  
16 argue that separately.

17 Defense document 2729 concerning Treatment  
18 of Diplomats after Last War by Garner.  
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20 Defense document 2836, Corbett - McLeod's  
21 Case.

22 2797, Survival of Immunity by Biggs.

23 2826, Oppenheim - Diplomatic Privileges  
24 Generally.

25 2843, Fenwick, excerpt.

2803, Department of State Bulletin - Experts

1 on Nurnberg.

2 ACTING PRESIDENT: All these documents are sub-  
3 ject to the same ruling, and are rejected.

4 MR. CUNNINGHAM: I would like, if your Honor  
5 please, to have tomorrow a reconsideration of the ruling  
6 on that question because I do consider it one of the  
7 most vital issues involved in this case, and it is  
8 one that will have its repercussions, and I feel  
9 most serious that the Court has not given this matter  
10 serious enough consideration at this time.

11 ACTING PRESIDENT: Mr. Tavenner.

12 MR. TAVENNER: If the Tribunal please, there  
13 is one matter that counsel apparently has overlooked,  
14 it is the redirect interrogatory of Mr. Eugene Ott  
15 which was to be processed and served. I understand  
16 the clerk has the copies but they have not been dis-  
17 tributed yet. That is the only matter that I know  
18 of that has not been disposed of in connection with  
19 this phase.

20 ACTING PRESIDENT: We can take that up the  
21 first thing in the morning.

22 We will adjourn until 9:30 tomorrow morning.

23 (Whereupon, at 1600, an adjourn-  
24  
25 ment was taken until Wednesday, 3 December,  
1947, at 0930.)